

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

CRIMINAL DOCKET

VERSUS

NO. 4:18-CR-0147

HENRY GUILLORY

**DEFENDANT'S OPPOSED MOTION TO CONTINUANCE OF SENTENCING
HEARING**

NOW comes Defendant Henry Guillory requesting that this Court continue the sentencing hearing scheduled for August 23, 2018 at 10 a.m. The initial sentencing hearing was held on Thursday, July 12, 2018 at 10:00 a.m. Judge Bennett continued the hearing to enable to the parties an opportunity to ascertain if five of the contracts in question, which are set-aside contracts under the Department of Veterans Affairs, historically underutilized business (HUB) program, should be included in the loss amount and the method used to determine the loss amount. The parties now agree that the five HUB contracts should be included in the loss amount. However, the parties are not in agreement regarding how the loss amount should be determined. Defendant seeks this continuance so that his retained expert witness can determine the fair market value of the services rendered under each of the twelve contracts. The government has expressed its opposition to a continuance, stating Defendant has had forty days to determine the loss calculation and is aware of the government's calculation.

Based on recent 5th Circuit case law, Defendant asserts the loss amount should be determined using a method of general loss calculation. In cases involving procurement fraud, the general loss calculation shall be reduced by the fair market value of the property returned and the

services rendered, by the defendant §2B1.1(b)(1)3(E), *U.S. v. Harris*, 821 F.3d 589,606 (5th Cir. 2016). The focus is on the pecuniary impact on victims, not the amount of profit the Defendant makes (*Id.* at 606).

5th Circuit case law does not define how the fair market value of services rendered is determined nor has the Government offered any options, indicating that method has never been used and stating the net profit made by Mr. Guillory is the loss amount. Defendant has retained an expert witness to determine the fair market value of the services rendered under each of the twelve contracts in question, prepare an expert report, and offer testimony. Defendant has requested the work be completed within the next 45 days. For this reason, Defendant respectfully requests a continuance.

Respectfully submitted,

/S/

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing to be served upon AUSU Daniel C. Rodriguez by email at Daniel.C.Rodriguez@usdoj.gov on this 20th day of August, 2018.

/s/

Tracie Jackson

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ORDER

BASED ON THE FOREGOING, it is ORDERED that Defendant Henry Guillory's Motion for Continuance is GRANTED. on this _____ day of August, 2018.

UNITED STATES DISTRICT JUDGE